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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,120	08/18/2003	David H. Sprogis	5014CON2	3480

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EXAMINER

CARLSON, JEFFREY D

ART UNIT	PAPER NUMBER
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID H. SPROGIS

Appeal 2009-010033
Application 10/643,120
Technology Center 3600

Before DALE M. SHAW, *Chief Appeals Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 C.F.R. §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on May 5, 2009. A Docketing Notice was mailed on May 18, 2009.

Claims 5-8 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2nd paragraph. *See Ex Parte Rodriguez*, 92 USPQ2d 1395 (BPAI 2009); *see also Aristocrat Techs. Austl. Pty. Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed. Cir. 2008). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled "Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph," located at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf . Thus, there is a question as to whether claims 5-8 and the claims which depend upon these claims meet the requirements of being definite under 35 U.S.C. § 112, 2nd paragraph.

Accordingly, it is ordered that the application is remanded to the Examiner to determine if claims 5-8 and the claims which depend upon these claims meet the requirements of 35 U.S.C. § 112, 2nd paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

babc

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